

City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-2020-04

July 15, 2020

APPLICATION

Applicant:	Mark Weisman
Location:	36 East High Street
Owner:	36 East High Street LLC
Action Request:	Variance to Section 1143.10(c)(2) front yard setback
Current Use:	Bar/Music Entertainment Venue
Zoning:	UP Uptown District
Surrounding Land Uses:	Commercial / Mixed Use / Church

BACKGROUND

Brick Street is a popular entertainment venue in Oxford, offering drinks, food, and live music in a primarily indoor setting. Owner Mark Weisman has requested relief from the required 16.5-foot front yard setback in the UP Uptown District for the purpose of replacing an existing covered patio with a new skydeck, thus allowing patrons to socialize with one another on a second story platform above ground level. The UP Uptown District requires a 16.5-foot front yard setback from all streets, except on High Street where buildings may be built directly abutting the public right-of-way. Observing that the subject property is a corner lot abutting both High Street and Poplar Street, the setback is only taken from the Poplar Street frontage. The applicant indicates in his narrative that the COVID-19 pandemic has spurred the need to spread patrons out across more floor area, as a more favored option in lieu of decreasing the occupant load inside the main building.

The site at 36 East High Street has undergone two (2) variance case reviews in the past relative to the 16.5-foot setback area. The first case, approved by the BZA on August 27, 1992, reduced the required setback along Poplar Street to “four feet more or less” in order to accommodate a new dumpster enclosure in the northeast corner of the site which still exists to this day. A more recent second case, approved by the BZA on September 30, 2002, approved the conversion of an open-air seating area into a covered patio occupying the entire 16.5-foot setback; this variance was approved on condition that: (1) the patio enclosure would remain an open air structure; and (2) the wrought iron proposed at the time would not be replaced with any kind of solid barrier. Subsequent COA approvals eventually allowed the painted concrete block and glass tile that encloses the patio today, as well as the installation of metal fencing at the corner of High and Poplar Streets.

DESCRIPTION

The applicant’s requested variance can be summarized as follows:

Requirement	Code Section	Standard	Proposal
Minimum Front Yard Setback	1143.10(c)(2)	16.5 feet	0 feet
Explanation: The UP Uptown District requires a 16.5-foot minimum front yard setback along all streets, except High Street where at least 70% of a building must meet the right-of-way line. The requested variance is a 100% reduction, essentially eliminating the requirement altogether. Although this is the exact same numerical reduction previously approved in 2002, staff finds that a new approval by the BZA is required due to two (2) factors: (1) the			

proposed project increases the number of stories beyond the scope of patio plans that went with the 2002 decision; and (2) the proposed skydeck extends 17 feet further south from the current patio roof overhang, to occupy an area currently open to the sky.

STAFF RECOMMENDATION

If the BZA determines that difficulties exist which are sufficient to warrant the variance, the staff recommends that the BZA cite any new or different specific evidence not yet identified and approve the variance request. At the time of this report, **staff believes more evidence is needed in order to support the variance request** to allow for a reduction in the front yard setback.

If the BZA does approve the variance it can make separate findings and attach any appropriate conditions it deems necessary as permitted by Section 1139.02(d)(2).

COMMENT FORMS

Notification was mailed to property owners within 200 feet and a sign was placed on the property. The notice specifically addressed possible changes to the date, location and format of the meeting due to the COVID-19 pandemic, including the possibility of a video conference and/or teleconference format. No official public comments have been received as of this writing.

DEPARTMENT COMMENTS

Below are comments from City departments:

Department	Respondent	Response
Economic Development	Jessica Greene, Assistant City Manager	Returned with Comments
<i>I believe that sky decks are a positive amenity in a community and support economic development. They provide a fun, outdoor atmosphere and if done properly and safely, can add a pleasant atmosphere for a community. I support this proposal and hope that this roof top/ lofted restaurant and/or recreational space concept is supported.</i>		
Engineering	Scott Otto, City Engineer	Returned without Comments
Fire	John Detherage, Fire Chief	Returned with Comments
<i>Brick St. is a popular location for calls for EMS and police service which a vast majority, if not all, are alcohol consumption related. I would have to expect that a second floor patio would only increase these issues. More than once we have responded to this location and found patrons that have fallen or been pushed from the second floor balcony inside. I can only imagine that this type of behavior would happen in this proposed outdoor area also.</i>		
Police	John Jones, Police Chief	Returned with Comments
<i>1. We currently work closely with bar staff to ensure security measures are in place and have no reason to believe this would change. In order to avoid additional burdens on public safety, the business would need to provide additional staff to monitor the upper deck, as they do the current patio.</i> <i>2. In addition to security staff, I would want to ensure the fence/railing is high enough. If there is a way to prevent items from being thrown or dropped from the second floor deck, they should be taken.</i> <i>3. If occupancy is not increasing, and this allows for patrons to space out more, this would increase safety in the establishment.</i>		

BZA SITE HISTORY

There are two prior BZA cases available in City records for this property, as outlined in the table below:

Request	Case No.	Standard	Granted
Variance to Minimum Side Yard Setback	BZA-05-1992	16.5 feet	4 feet more or less
Explanation: Reduced setback from Poplar Street granted by the BZA in order to comply with the City's requirement for a refuse container storage area, given that the building already occupied nearly 100% of the real property. Variance granted on August 27, 1992 by a 4-0-0 vote. The Code at the time defined a front setback for a corner lot as being measured from the <i>shortest lot line ... which abuts upon a street</i> ; therefore, the setback from Poplar was construed as being from the side rather than the front.			
Variance to Minimum Front Yard Setback	BZA-14-2002	16.5 feet	0 feet
Explanation: Setback from Poplar Street granted by the BZA to allow a previous patio seating area (open to the sky, identified in the staff report as a <i>sidewalk café</i>) to be converted to a covered open-air patio. Variance granted on September 30, 2002 by a 3-1-0 vote, subject to 2 conditions. As is current policy in the current Oxford Zoning Code, at the time corner lot front yards were measured from both abutting streets.			

ANALYSIS

The burden of proof is upon the Applicant to present reliable and substantial evidence that supports the request for variance (Section 1139.02(c)(1)). Furthermore, the BZA must find that practical difficulties exist that would render strict application of the Code unreasonable (Section 1139.02(c)(2)). In determining whether such difficulties exist which are sufficient to warrant the variance, the Board shall use the attached eight decision criteria (A-H) in its deliberation. See the enclosed narrative addressing the review criteria from Mr. Weisman. Staff's review of the criteria is included below:

Regarding **Criterion A, whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance**: The property's previous and continued use as an entertainment value is sufficient to demonstrate that there can be beneficial use of the property without the variance. The purpose of the request, as stated by the applicant, is to reduce indoor occupancy in response to the current pandemic. However, staff feels the evidence contributed is insufficient to demonstrate this criterion supports the variance request because the owner/applicant would have to be deprived of *reasonable* economic return. Denying the variance would not deprive the owner of continuing to operate the business under the current setup and conditions, which may or may not continue to yield a return that is reasonable.

Regarding **Criterion B, whether the variance is substantial**: The applicant is asking for a **100%** decrease (elimination) of the front yard setback. On its face, staff finds this numerical adjustment to be a substantial request. However, in consideration of the current covered patio's previous approval by the BZA in 2002, this raises the question of whether the substantiality of the request should be applied to the overall scope of the project, or only to those portions that increase the bulk, scale and scope of the current patio amenity; staff advises the BZA that they may weigh this criterion from either perspective. The overall height of the replacement structure is estimated to be only about 1 foot taller (the previous plans depict the roof ridge at a 15 foot height from grade, while the tallest feature on the proposed project measures right above 16 feet). Despite this minimal change in overall height, staff finds the intensity of the use would increase in a vertical fashion by adding a second story not currently in existence.

Regarding **Criterion C, whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance**: Oxford's Uptown district is characterized by a plethora of locations, including restaurants, bars and other venues for social activity and entertainment, especially for college students. A sky deck feature could serve to further complement Brick Street as a popular Oxford venue. As of the writing of this report, staff does not believe adjoining properties will suffer any additional detriment through the granting of this variance to allow for a second story sky deck.

Regarding **Criterion D, whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage)**: Community Development staff advises the BZA to rely upon comments from the Fire Chief and Police Chief in consideration of this criterion.

Regarding **Criterion E, whether the property owner purchased the property with knowledge of the zoning restriction**: Mr. Weisman's narrative clarifies that he was aware of the restriction, and this request serves as an extension of the project scope approved in 2002.

Regarding **Criterion F, whether the property owners' predicament feasibly can be obviated through some method other than a variance**: The owner makes clear in his narrative that the predicament faced is the COVID-19 pandemic, necessitating a policy of spreading out patrons to lessen chances for transmission of the virus. However, hint is also given at the "long-term future of the establishment," thus the request appears to be intended not only to combat the current economic hardship posed by the pandemic but also serve as a substantial permanent improvement for years to come.

Regarding **Criterion G, whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance**: The spirit and intent of the 16.5-foot setback appears to be an aesthetic one, as the community has opted for wider corridor envelopes along its side streets as compared to the primary thoroughfare along High Street. Various variances and construction projects have been allowed to occur within the front setback areas of Uptown side streets in the past, including such examples as the addition at 45 East High Street and the municipal parking garage. However, the concept of a standalone open-air deck along the frontage of any side street and within the front setback would be new territory for Oxford's Uptown district.

Regarding **Criterion H, any other relevant factor**: There are no other factors staff believes warrant comment, but the BZA may rely on other evidence contributed by the applicant during the hearing in making a determination on whether to grant the variance.

SUBMITTED BY:



Zachary Moore, AICP
Planner, Community Development Department

DATE: July 6, 2020

BZA MOTION FOR VARIANCES

With regard to the Request for Variance # **BZA 2020-04**, being a Variance to Section 1143.10(c)(2), front yard setback at 36 East High Street.

Mr./Ms. _____ hereby moves that the Board adopt and make the following findings of fact:

- A. The property in question (**will / will not**) yield a reasonable return or (**can / cannot**) be used beneficially without the variances because:_____
- B. The variance (**is / is not**) substantial because:_____
- C. The essential character of the neighborhood (**would / would not**) be substantially altered by the variance and adjoining properties (**would / would not**) suffer a substantial detriment as a result of the variance because:_____
- D. The variance (**would / would not**) adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because:_____
- E. The property owner (**did / did not**) purchase the property with knowledge of the zoning restriction because:_____
- F. The property owner's predicament (**can / cannot**) feasibly be obviated through some method other than a variance because:_____
- G. The spirit and intent behind the zoning requirement (**would / would not**) be observed and substantial justice done by granting the variance because:_____
- H. Other relevant factors, if any, considered include:_____

It is further moved that after considering and weighing these factors, the Board should find that practical difficulty (**is/is not**) shown sufficient to warrant granting the Variance requested, and that the Variance should be accordingly (**APPROVED / DENIED / APPROVED WITH THE FOLLOWING CONDITIONS**). The conditions for approval, if any, include:

Motion Seconded by: Mr. / Ms. _____.

Vote: Aye_____ Nay:_____

BZA-2020-04 Surrounding Property Owners Map

Legend

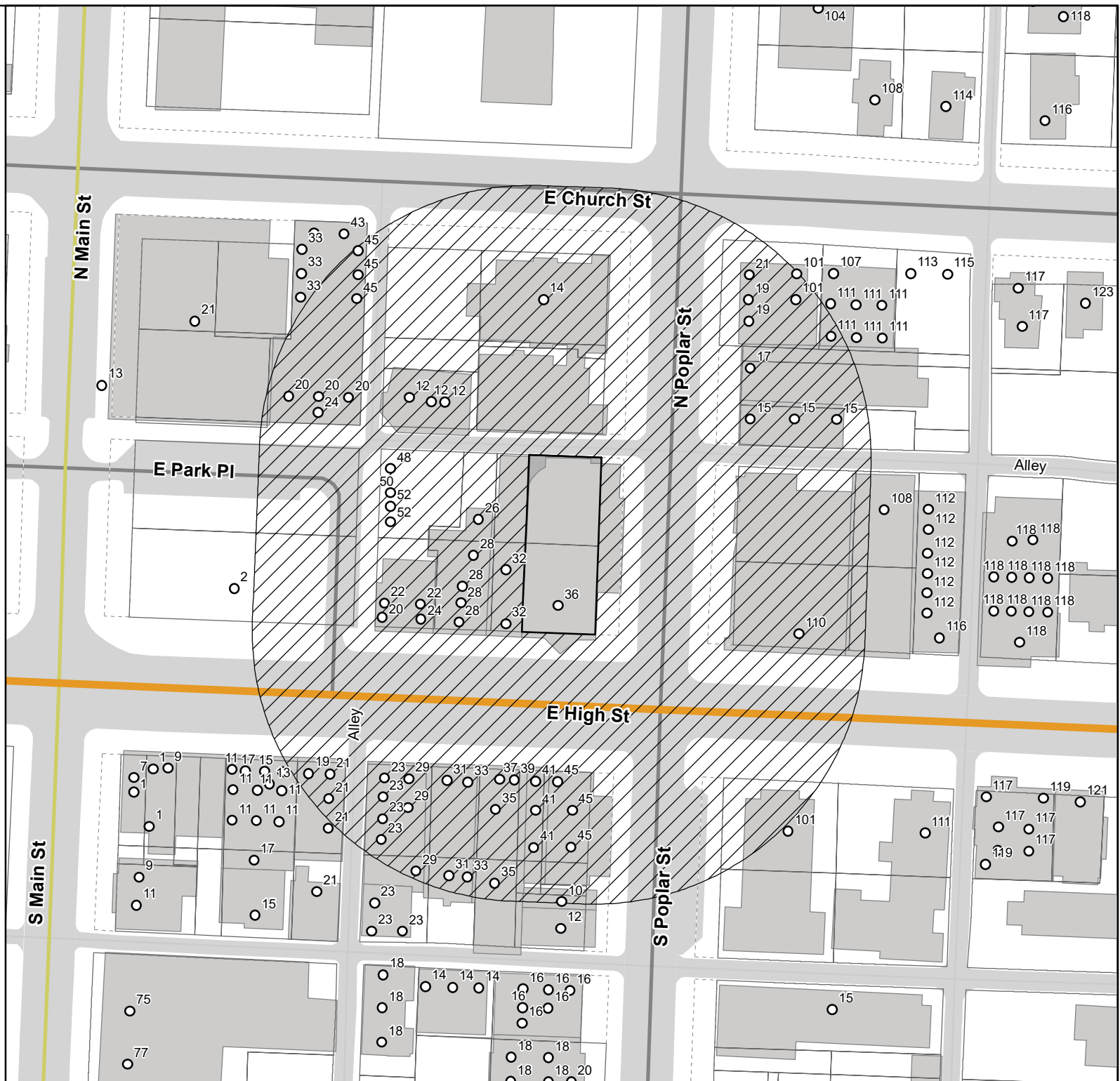
-  Subject Parcel
-  200 Ft. Buffer
-  Oxford Corporation Limit
-  Parcel
-  Vacated Right-of-Way
-  Building Footprint
-  Paved Roadway



1 inch = 100 feet

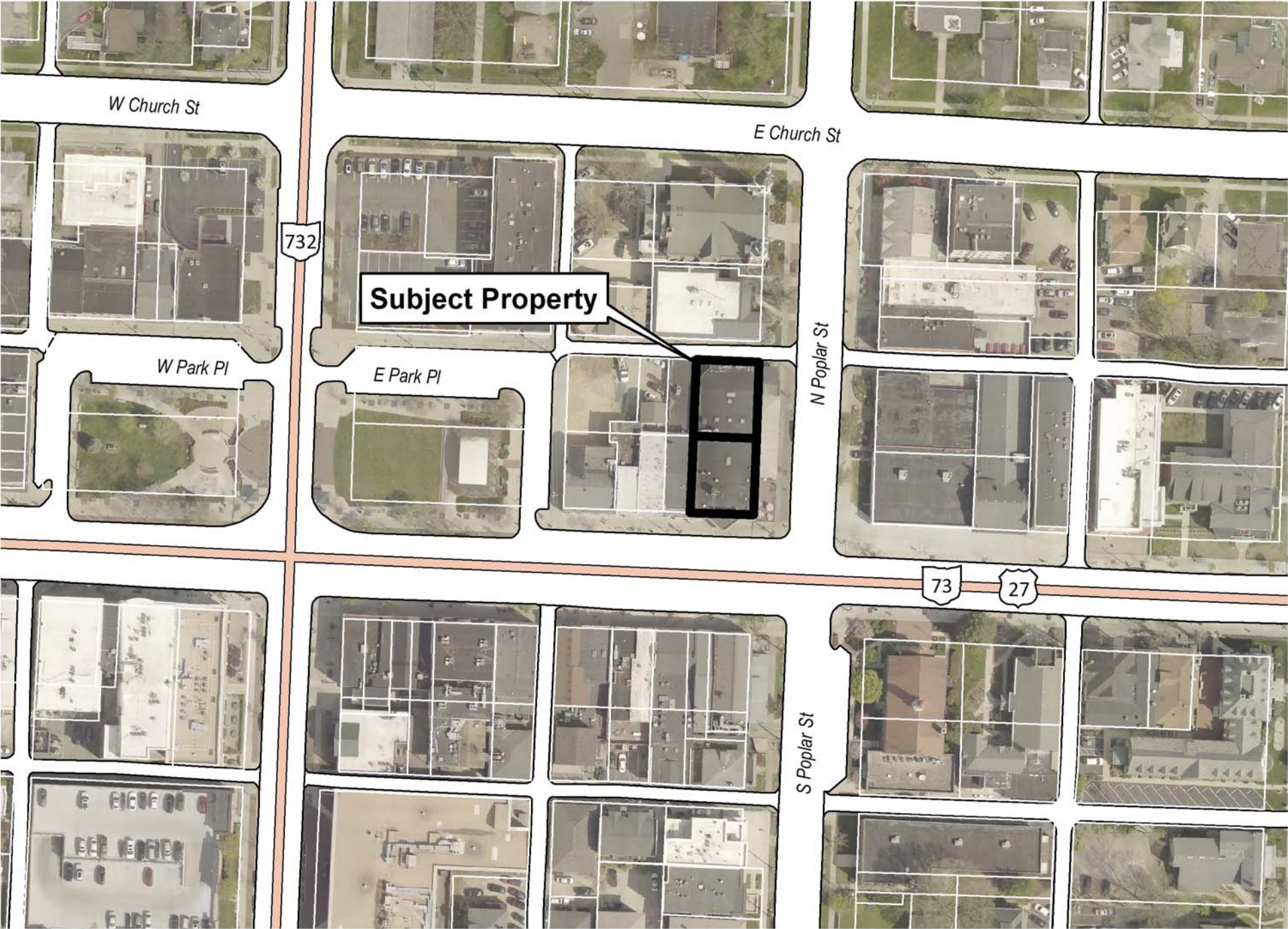
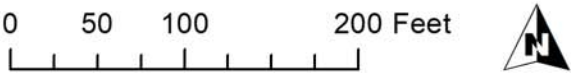
Prepared on Wednesday, July 1, 2020

The City of Oxford does not guarantee the dimensional accuracy of this map. Precise dimensional accuracy should be based upon recorded deeds, plats or a professional survey.



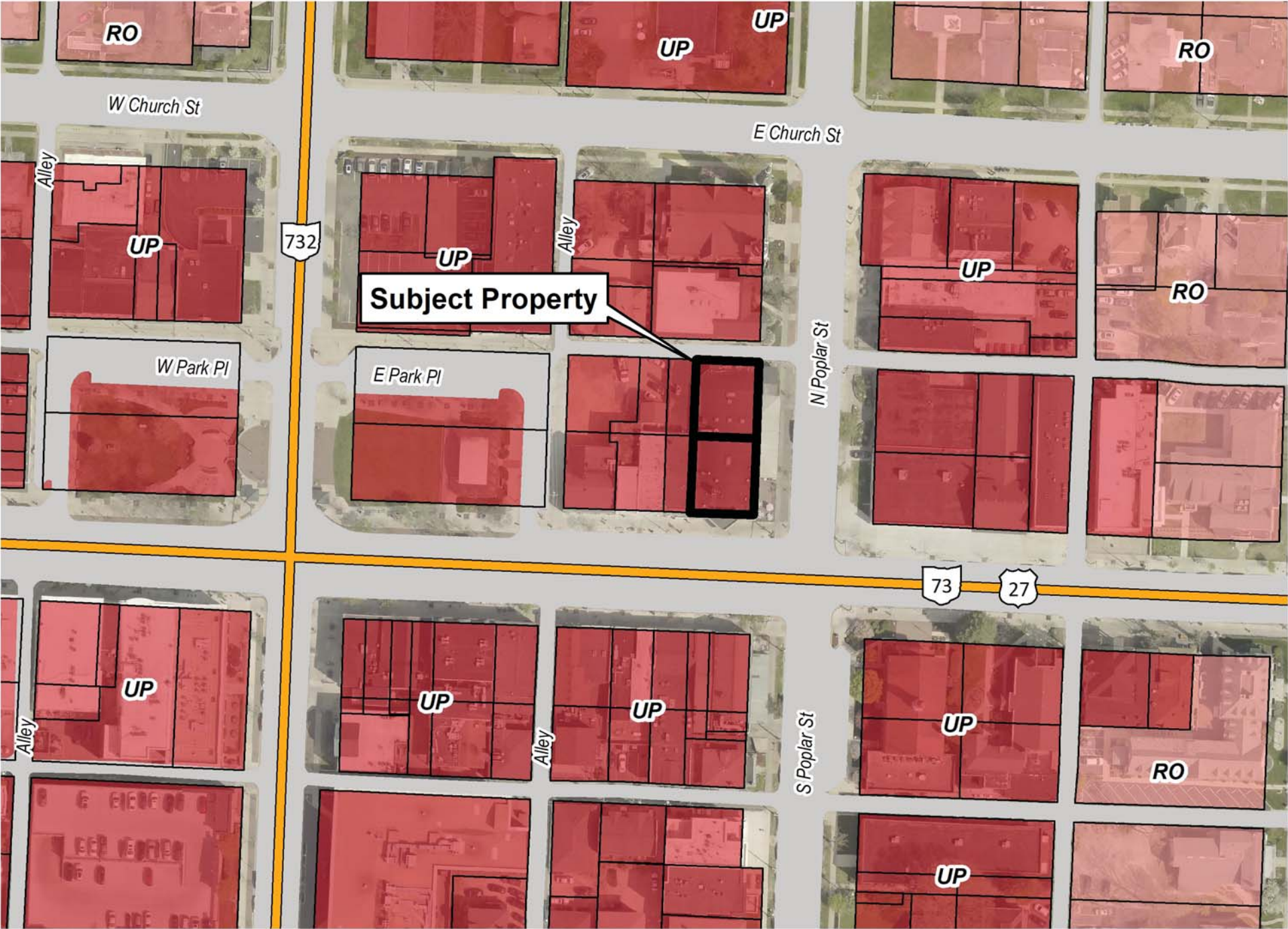
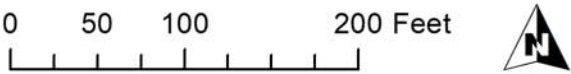
Location Map

 Site Parcel(s)



Location Map

 Site Parcel(s)



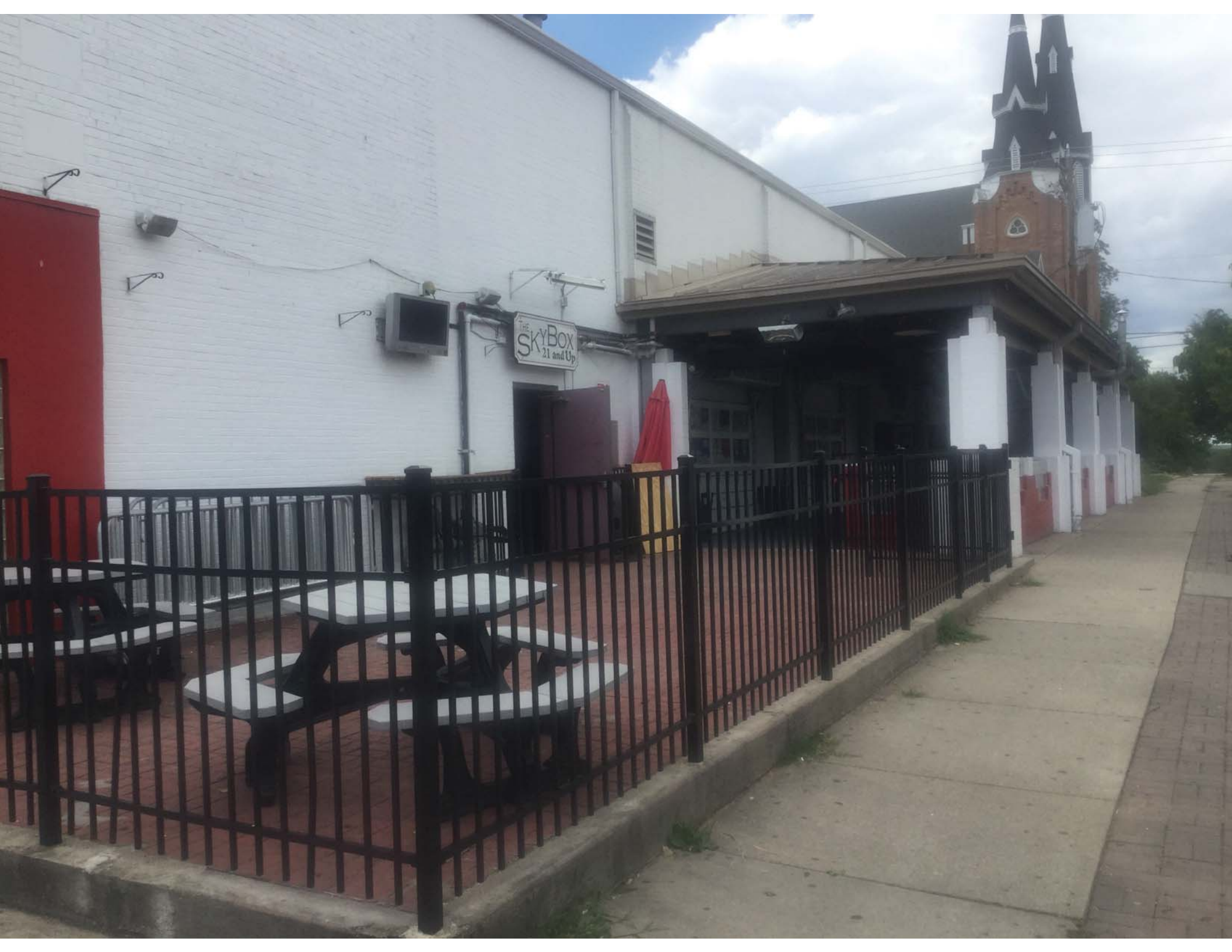


SNOW
ROUTE
NO PARKING
DURING ANY LEVEL
OF SNOW EMERGENCY
OR WHEN SNOW IS 2"
OR GREATER
TOW-AWAY ZONE
8:00 A.M. - 5:00 P.M.

DO NOT
ENTER







LETTER OF AGENCY

To Whom It May Concern:

Please be advised that Mark Weisman has permission to represent our interest with the City of Oxford and act on our behalf for 36 East High street regarding the property located at 36 E. High St Oxford, Ohio 45056

Thank-you,

Signed: _____

Date: 7/6/2020



Internal Use Only:

Case No.

BZA-2020-04

Date Filed

6/15/20

Petition for Zoning Variance

Petitioner Information

Attach a Letter of Agency if the Petitioner is not the property owner.

Name *

Mark Weisman

Mailing Address *

36 East High St

City, State & Zip Code *

Oxford, Ohio 45056

Telephone Number(s) *

513-255-2851

Email Address

mw120396@gmail.com

Owner Information

Name *

Weisman Enterprises / 36 East High LLC

Mailing Address *

36 East High St

City, State & Zip Code *

Oxford, Ohio 45056

Telephone Number(s) *

513-255-2851

Email Address

mw120396@gmail.com

Variance and Lot Information

Requested Variance. Indicate the nature of variance and applicable section(s) of the Planning and Zoning Code.

Relief is requested from the 16' setback per Oxford Ordinance 1143.10(C)(2) to allow 0' setback for new Skydeck. This is not increasing the footprint of the existing patio that was granted approval in 2002.

Location of Requested Variance *

36 East High St

Name of Building

Brick Street Bar

Legal Description *

Commercial - Restaurant / Cafe / Bar

Zoning District *

Oxf Twp-O Corp-D L

Total Acreage *

.1700

Existing Use of Site *

Restaurant / Cafe / Bar

Proposed Use (if applicable). A description of operations, including type of goods sold, services performed, and expected number of customers, clientele, delivery, and service vehicles, and the hours of operation.

- D. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);
- E. Whether the property owner purchased the property with knowledge of the zoning restriction;
- F. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;
- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
- H. Any other relevant factor.

Fees & Receipt

The variance fee is \$200.00, plus \$100.00 for each additional variance request up to a maximum of \$1,000.00, plus \$10.00 postage charge. **Fees may increase if staff determines that you need more variances.**

Sign and Date

Petitioner Signature *


 Date * 6/15/20

Submit Application, Plans and Documentation, and Fees

We will not accept incomplete applications and/or plans and documentation.

Send or drop off this application with required plans and documentation as attachments and a check for fees and postage charge, made payable to **City of Oxford**, to Community Development Director, 15 South College Avenue, Oxford, OH 45056.

Direct questions to the Community Development Department at (513) 524-5204. The application will be placed on the next possible agenda.

Note: You must adhere to notification and publication requirements. Submit materials 30 days prior to the Board of Zoning Appeals meeting at which the action is requested. City Staff will place a public hearing sign on the subject property. **The Petitioner is responsible for removing the signage at the completion of the hearing(s).**

¹ Butler County Auditor Real Estate Search: <http://www.butlercountyauditor.org/>

² City of Oxford Codified Ordinances: <http://www.cityofoxford.org/fees-ordinances-and-charter>

BRICK ST BZA APPLICATION – DECISION STANDARD NARRATIVE

Decision Standard comments for the construction of the newly proposed Skydeck for Brick Street Bar at 36 East High Street:

A. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;

- The approval of this variance will allow Brick St to increase patio / deck square footage without attempting to increase the occupant load of the existing building, thus spreading people out and mitigating risk relative to Covid-19.

B. Whether the variance is substantial;

- This variance does not expand the footprint that the existing variance granted in 2002 allowed.

C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

- The essential character of the neighborhood would not be substantially altered by the allowance of this variance due to the continuation of the existing architectural detail vertically. The attempt is to blend the new construction into the architectural fabric of the existing building and surrounding neighborhood.

D. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);

- There would be no interruption in the delivery of governmental services due to this variance.

E. Whether the property owner purchased the property with knowledge of the zoning restriction;

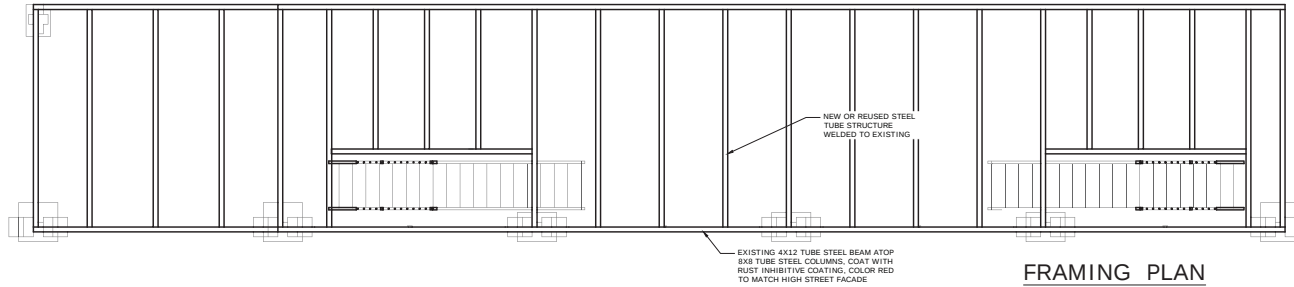
- Yes, the property owner was aware of the restriction and this application is to expand vertically to the existing variance approval back in 2002.

F. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

- Due to the impact COVID19 and current restrictions and risk mitigation recommendations, , this variance approval helps separate people and creates more open air space where Covid-19 and other viruses are much less transmittable. The sky deck creates a less dense population inside without affecting the business revenue for the short term and long-term future of the establishment.

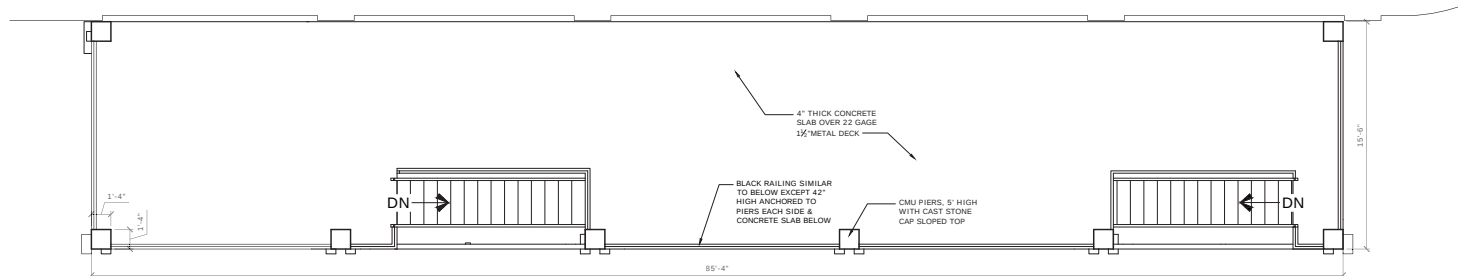
G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

- The proposed Skydeck would be creating space vertically from the previously approved variance and not expanding the current footprint of the business.



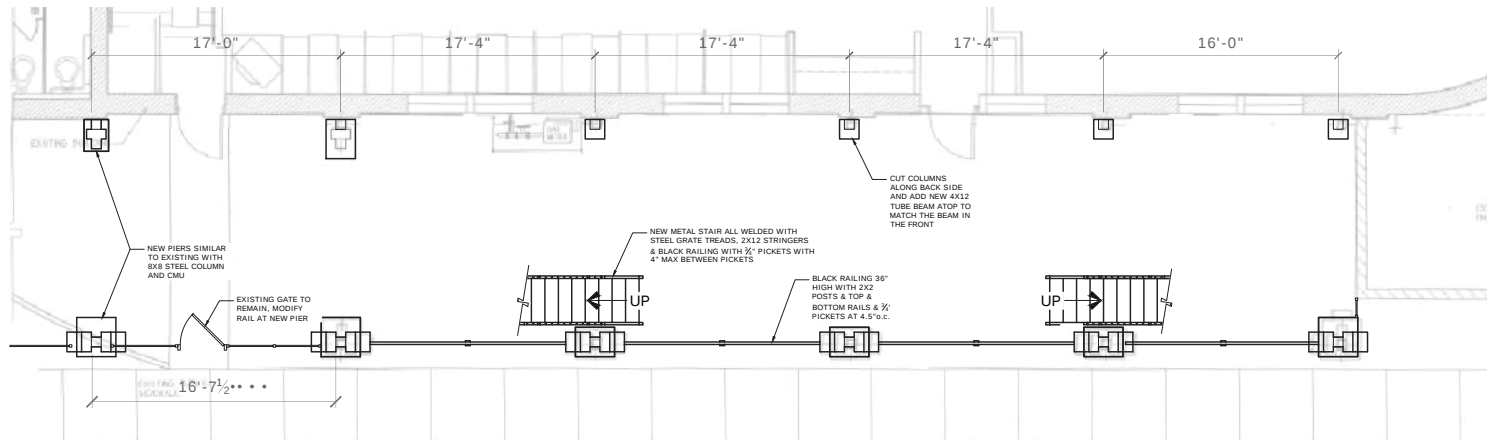
FRAMING PLAN

SCALE: 1/4" = 1'-0"



UPPER LEVEL FLOOR PLAN

SCALE: 1/4" = 1'-0"



STREET LEVEL FLOOR PLAN

SCALE: 1/4" = 1'-0"

NEW SKYDECK CONCEPT FOR:
BRICK STREET BAR
36 HIGH STREET
OXFORD, OHIO 45056

JOHN R. GRIER ARCHITECT INC.
11501 DEERFIELD RD
CINTI, OH 45242
513-489-3690

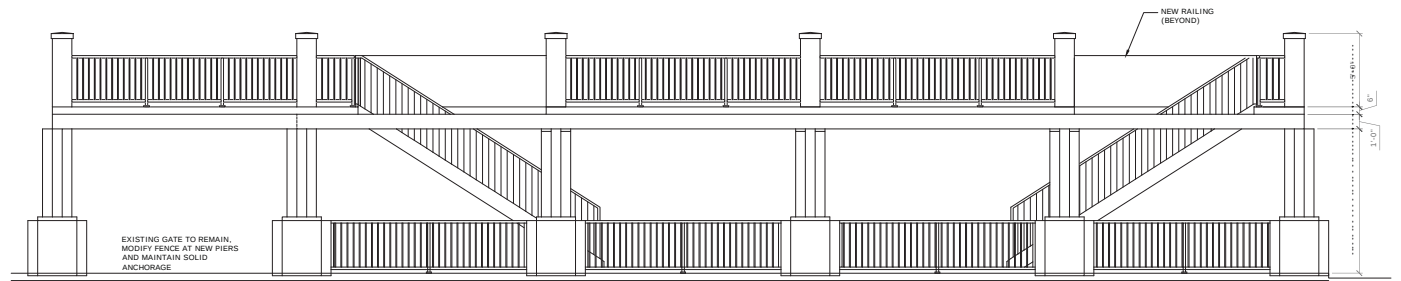
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DATE: 06-11-2020

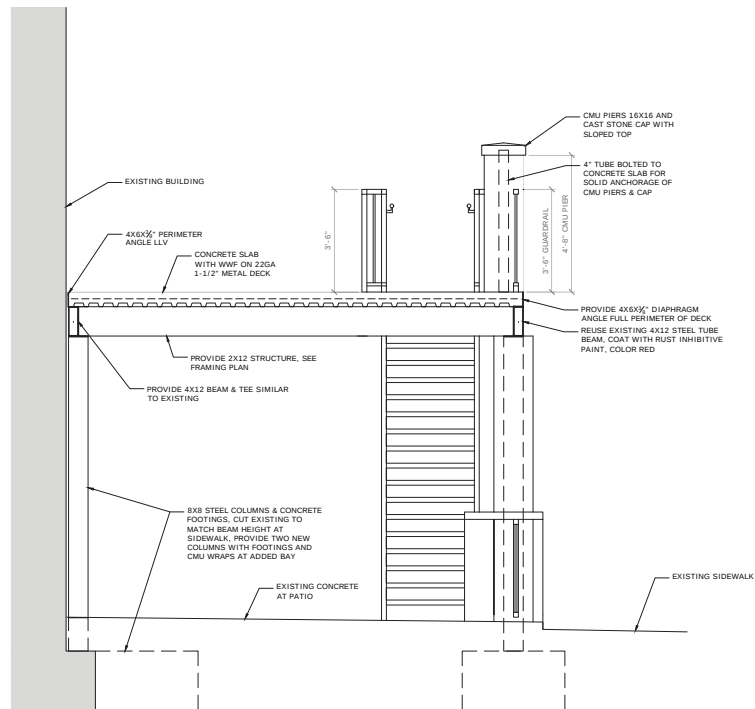
CONCEPT #

A-1

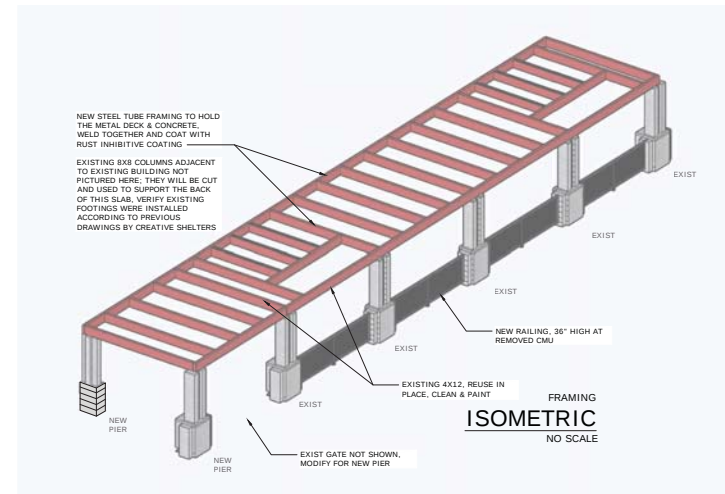
FILE: C-5
JOB #2028



POPLAR STREET
EAST ELEVATION
SCALE: $\frac{1}{2}" = 1'-0"$



SECTION VIEW
SCALE: $\frac{1}{2}" = 1'-0"$



NEW SKYDECK CONCEPT FOR:
BRICK STREET BAR
36 HIGH STREET
OXFORD, OHIO 45056
JOHN R. GRIER ARCHITECT INC.
11501 DEERFIELD RD
CINTI, OH 45242
513-489-3690

DRAWN BY: TWH & RWD
DATE: 06-11-2020

CONCEPT #
A-2
FILE: C-5
JOB #2028



EAST SIDE/ POPLAR STREET
NO SCALE



SOUTHEAST CORNER/ HIGH STREET
NO SCALE

NEW SKYDECK CONCEPT FOR:
BRICK STREET BAR
36 HIGH STREET
OXFORD, OHIO 45056

JOHN R. GRIER ARCHITECT INC.
11501 DEERFIELD RD
CINTI, OH 45242
513-489-3690

DRAWN BY: TWH & RWD
DATE: 06-11-2020

CONCEPT #

A-3
FILE: C-5
JOB #2028